* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ WP(C) No.4519/2007

VINAY CHAUHAN ..... Petitioner through
Mr. Atul Kumar, Adv.

versus

UNION OF INDIA ..... Respondent through
Mr. Ashwani Bhardwaj,
Adv.

WITH

\+ WP(C) 563/1988

EX GRANDIER UJJAGAR SINGH ..... Respondent through
Mr. M.G. Kapoor, Adv.

versus

CRPF ..... Respondent through
Ms. Jyoti Singh with Mr.
Ankur Chibber, Advs.

WITH

\+ WP(C) 504/2007

SEP. KULDEEP SINGH ....Petitioner through
Mr. D.S. Kauntae, Adv.

versus

UNION OF INDIA .....Respondent through
Ms. Barkha Babbar, Adv.

Date of Hearing: November 14, 2007

Date of Decision: November 20, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L.BHAYANA

1. Whether Reporters of local papers may be allowed to see the Judgment. Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: VIKRAMAJIT SEN, J

1. In this batch of writ petitions the Petitioners are aggrieved with the failure/refusal of the Respondents to accept their requests for revocation of the withdrawal of their respective pleas for premature retirement or discharge from the Army. This legal conundrum has arisen before the Court on several occasions. A Division Bench of this Court had opined in *Union of India -vs- Harendralal Bhattacharya*, 1984 (1) SLR 1, a quarter century ago, that a notice for voluntary retirement can be withdrawn unilaterally so long as the employee remains in service, but cannot be allowed after termination of his service. In other words, a notice for voluntary retirement can be withdrawn at any time before it becomes effective. In *Balram Gupta -vs- Union of India*, MANU/SC/0608/1987 : 1987 Supp SCC 228 the Apex Court was seized of a situation where

voluntary retirement from service had been submitted in terms of letter dated 24.12.1980. This request, however, was withdrawn by letter dated 31.1.1981 but nevertheless the employee was relieved from service by an Order dated 31.3.1981, which also recorded that the withdrawal of the application for voluntary retirement “has also been considered and found not suitable”. The Court held that there was no valid reason for withholding the Petitioner's request for revocation or withdrawal of the request for voluntary retirement. More recently, this very question, once again, came up for consideration before the Supreme Court of India in ***Srikantha*** *S.M. -vs- Bharath Earth Movers Ltd.*, MANU/SC/2119/2005 : (2005) 8 SCC 314. In that case, the employee had submitted his resignation on 4.1.1993 and it was accepted on that very date. However, Casual Leave was granted from 4.1.1993 to 13.1.1993. The Management informed the employee that he would be relieved after office hours on 15.1.1993. The employee withdrew his resignation on 8.1.1993. Their Lordships referred to *Power Finance Corporation Ltd. -vs- Pramod Kumar Bhatia*, MANU/SC/1136/1997 : (1997) 4 SCC 280 :

Shambhu Murari Sinha -vs- Project & Development India(I), MANU/SC/0335/2000 : (2000) 5 SCC 621 and *Shambhu Murari Sinha -vs- Project & Development India(II)*, MANU/SC/0183/2002 : AIR 2002 SC 1341. Since ***Srikantha*** had been granted Casual Leave upto 15.1.1993, their Lordships held that *vinculum juris* continued till that date and the request for withdrawal of voluntary retirement prior to that date perforce had to be accepted. This proposition of law is, therefore, very well-entrenched in our service jurisprudence. The question that remains to be determined by us is whether the request for withdrawal of the application for voluntary or premature retirement had been made prior to its becoming effective, since acceptance thereof would not act as a jural severance of the engagement or contract of personal services.

2. The Petitioner (Vinay Chauhan) in WP(C) 4519/2007 has filed an application for premature discharge on compassionate grounds, citing family problems, on 15.11.2006, which was “accepted /approved” on 12.1.2007. The Petitioner was informed by the OIC Records that his

discharge would be carried out under Item-1(I) (b) and III(iv) of the Table annexed to the Rule 13(3) of the Army Rules, 1954 (for short 'Army Rules'). The Petitioner, Vinay Chauhan, alongwith two Applicants, were ordered to report to PRTC (Depot Coy) for “Discharge Drill” on 10.6.2007 for being Struck off Strength(SoS) from the Army with effect from 30.6.2007. We had sought an explanation from the Respondents as to why a passage of six months was found necessary for the Petitioner to be declared SoS. It has been explained to us that after an application for Discharge had been accepted by the Commanding Officer (CO) it has thereafter still to receive the sanction or approval from the CO under Rule 13(3). One of the factors that are kept in mind at the second stage is whether the discharge will adversely or severely affect the strength of the Army. The consequence is that the date on which a resignation or request for discharge becomes effective is not the date on which it receives the sanction or approval from the OC under Rule 13(3), but the date on which the person concerned is struck of the Strength of the Army, that is, SoS. We hold so. The situation is identical to that which had

occurred in ***Srikantha***.

3. In these circumstances WP(C) 4519/2007 is allowed. The Petitioner shall be deemed to have continued in service, notwithstanding his application for discharge from the Army; he shall be entitled to all consequential reliefs.

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4. Ujjagar Singh submitted an application dated 3.4.1986 requesting from discharge from service at the earliest. According to the Respondents the request was finally approved by the Senior Record Officer, the Grenadiers on 26.4.1986. Thereafter, by letter dated 30.4.1986 the Petitioner, alongwith 27 other persons, was discharged/transferred to Pension Establishment on compassionate grounds. We have perused this letter and the original documents contained in the Petitioner's Dossiers. Learned counsel for the Petitioner had strenuously contended that the discharge of the Petitioner had yet to be sanctioned by the OC Unit on that date. Keeping in view the original documents dated 3.4.1986 we

accept the contention of learned counsel for the Petitioner that the failure to score out the symbols in the letter dated 30.4.1986 was by oversight. Mr. Kapur, learned counsel for the Petitioner, contends that before the Petitioner's request for discharge had become legally effective it stood withdrawn by letter dated 22.7.1986. He has also relied on an earlier letter the receipt of which has been denied. The letter purportedly reads as follows:

Registered/AD
22 Jul
~~Aug~~ 2006

From : 2674287
Gdr Ujjagar Singh
9th Grenadiers/Hq 16 Inf Div

To

The OIC
Records The Grenadiers
Post Bag No17
Jabalpur (MP)

Kindly refer to your letter No.0331/125/Adm-1 dated 30 Apr 86.

2. It is submitted that I had put up an application dated 20 Mar 86 to OIC Records, Grenadiers through Co 9 Grenadiers, requesting for discharge from service. The same was accepted by OIC Records and my discharge was

sanctioned vide your letter number quoted above, by Co 9 Grenadiers under AR 13(3) (IV) before completion of terms engagement and I was accordingly discharged from service.

3. Consequent to my discharge and poor conditions at home, I am unable to find proper employment for myself, as such my condition and my people at home has further deteriorated which is causing me greater worry and anxiety. I do not have any scope or survival in the near future which will have drastic effect on my family.

4. In view of the above, I humbly request that I may please be reinstated in the service and the discharge issued vide your letter under ref may please be cancelled. I shall remain grateful to you.

Yours faithfully,
No2674287 Gdr
Ujjagar Singh
Vill : Kante
PO : Palkwah
Distt.:Una(HP)

5. On our specific query as to whether there is any proof of delivery of this letter Mr. Kapur has answered in the negative. Instead, he has heavily relied on asseverations made in the Writ Petition to the effect that "petitioner,

therefore, immediately after his arrival at the Grenadiers Regimental Centre on 30.5.86, during the staff parade held on 1.6.1986, withdrew his request for discharge. The petitioner was interviewed first by the Adjutant and later by the Commandant of the Centre during Commandant's staff parade. This is a routine parade during which all new arrivals and departures are interviewed by the Commandant. At the interview the petitioner made a request to the Adjutant that he no longer was willing to seek discharge from the Army Service. The Petitioner was told by the Adjutant that he may make a written application in connection with his unwillingness to proceed on discharge. The petitioner made an application dated 13.6.86, a translated copy of which is at Annexure P-2, wherein he expressed his unwillingness to proceed on discharge. Such application was made by the petitioner much before his discharge on 25.7.86.....". Mr. Kapur's contention is that a specific denial to these statements has not been made in the Counter Affidavit. It is true that the rigours of pleadings are applicable to writ petitions, but in our view not to the same extent as in civil suits. If, on a

holistic reading of the Counter Affidavit, it is evident that the statements made in the Writ Petition have not been admitted the Writ Court should not stand on strict legal formalities. If the pleadings in the Counter Affidavit present a sequence of events into which the Petitioners' version of events cannot be inserted without violating the other, the Court should infer that a denial has been made.

6. In the Counter Affidavit it has been asserted that “on 30.5.1986 the petitioner reported to The Grenadiers Regimental Centre for his discharge. Thereafter, petitioner was discharged from service on 25th July 1986 under Army Rule 13 (3) III (iv) ....” Furthermore, that “the petitioner's averment in para 3 of the writ petition that despite his discharge he was serving in the Grenadiers Regiment as a Grenadier is false and misleading”. Most importantly, it has been pleaded that “the petitioner sent an application by Registered AD Post dated 22 July 86 to The Officer-in-Charge Records for reinstatement .....” which was received in the Record Office on 16.8.1986. After the Petitioner had been discharged from service all formalities

required thereof had been completed. It is palpably clear that the Respondents have not admitted that any oral request was made by the Petitioner prior to his discharge.

7. We have reproduced the letter of the Petitioner admittedly received by the Respondents on 16.8.1986, which statement has not been denied in the Rejoinder. We are of the opinion that the letter was actually written in August, 1986 and was predated by scoring out letter 'Aug' and overwriting it with '22 Jul'. Since the date of discharge is not in dispute, and since the Petitioner speaks of failure to find proper employment thereafter, we conclude that the letter could not have been written on 22.7.1986. Even more significantly this letter ought to have mentioned the alleged verbal requests for withdrawal of the discharge orally on 1.6.1986 and subsequently in writing inter alia through an application dated 13.6.1986. The documents put forth by the Petitioner do not commend credence.

8. Learned counsel for the Petitioner has drawn our attention to the Orders dated 3.10.2007 allowing WP(C)

No.5037/2000. However, these Orders are of no avail to the Petitioner since the facts are totally distinct. A request for voluntary retirement was contained in the Notice dated 4.2.1999; the request was accepted on 31.3.1999 making it applicable as per the Petitioner's request with effect from 3.7.1999. The Petitioner had withdrawn the Notice dated dated 4.2.1999 on 3.4.1999, well before it could have become effective.

9. Tampering with documents and deliberately filing documents that are manufactured is sufficient reason for dismissal of writ petition. We dismiss the writ petition on this ground. Even on merits, since the letter dated “Aug 1986” had been written and/or received by the Respondents after the Petitioner had been struck of the Strength of the Army (SoS) since his request for discharge had become effective, it could not have been acted upon.

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10. Kuldeep Singh asserts that on 29.12.2004 his Commanding Officer compelled him to sign a letter seeking

discharge. We have perused the letter and note that it has been signed by two Witnesses. The version of the Petitioner lacks credence. The statutory petition dated 15.2.2005 under Section 26 of the Army Act against the alleged forcible and illegal discharge, praying for the cancellation of his discharge under Rule 11(2) of the Army Rules, 1954, has been turned down. After due consideration the letters addressed to the Brigade Commander as well as the Chief of Army Staff appears to us to be after-thoughts, having no legal efficacy since the Petitioner' applications for seeking discharge on compassionate grounds have already taken effect.

11. Reliance is placed by learned counsel for the Petitioner on Rule 11(2) which states that - “the discharge of a person, validly sanctioned by a competent authority, may, with the consent of the discharged person, be cancelled by any authority superior to the authority who sanctioned the discharge either without any conditions or subject to such conditions as such discharged person accepts.” This provision does not provide an avenue to

discharged personnel to seek a cancellation of their discharge on the grounds of a change of heart or mind after it has attained finality, that is, after he has been declared SoS. This provision empowers the appropriate authority to call back to service any discharged personnel, but with his consent. It is not at the instance of the discharged person that this Rule can be invoked.

12. Writ Petition is without merit and is dismissed.

(VIKRAMAJIT SEN)
JUDGE

NOVEMBVER 20, 2007
tp

(S.L. BHAYANA)
JUDGE